

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN JIM SHOCKLEY**, on January 8, 2001 at 8:00 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Jim Shockley, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Jeff Laszloffy, Vice Chairman (R)
Rep. Darrel Adams (R)
Rep. Gilda Clancy (R)
Rep. Aubyn A. Curtiss (R)
Rep. Bill Eggers (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Linda Holden (R)
Rep. Joan Hurdle (D)
Rep. Jeff Mangan (D)
Rep. Brad Newman (D)
Rep. Mark Noennig (R)
Rep. Ken Peterson (R)
Rep. Diane Rice (R)
Rep. Bill Thomas (R)
Rep. Merlin Wolery (R)
Rep. Cindy Younkin (R)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Mary Lou Schmitz, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: **HB 54 - 1-05-01**
HB 104 - 1-05-01

HEARING ON HB 54

Sponsor: Rep. Carol Juneau, HD 85,

EXHIBIT(juh05a01)EXHIBIT(juh05a02)EXHIBIT(juh05a03)

This Bill will allow for voter registration on the same day an election is held and is called Poll Booth Registration. The two introductory "Whereas" give a good over-view of the intent of the Bill. The Montana Constitution provides all elections must be free and open. The Montana Constitution allows the legislature to create poll booth registration. This was an issue that was discussed and debated at length during the 1972 Constitutional Convention and the delegates agreed to leave this issue to the legislature and there is a strong suggestion in the transcripts that legislation for poll booth registration be enacted.

Voting is one of our basic rights and there should not be any barriers to this right. The current systems in place, requiring voter registration with time lines and various specifics required, are a barrier. **Rep. Juneau** has a personal belief in the power of the vote and has strived to strengthen the Indian vote and their participation in the non-Indian political arena. Voting for many people, particularly the majority population, has been a part of a life style and culture for many years, a normal process. For others, it has been a hard won legal right. The right to vote by Indian people and the participation in this process was not made official until 1924 when Indians were allowed to be citizens of the United States. Prior to that time they fought in World War I and are proud of their veterans.

As members of this 2001 legislature, it is important to remember the 1972 Montana Constitution delegates in their discussion and debate on this issue.

{Tape : 1; Side : A; Approx. Time Counter : 0 - 10.5}

Proponents: Briana Kerstein, Montana People's Action, a state-wide low-income community action organization; one of its main activities is voter participation. Increase in voter participation is a good thing because it strengthens the government and increases the number of people who are representing it. Creating an easier voter registration process is a key step towards increasing voter participation.

Matthew Leow, Montana Public Interest Research Group, (PIRG), an organization with 5,000 members in Montana dedicated to good government. This group believes that to have an effective democracy, we need to have higher voter participation in our elections.

{Tape : 1; Side : A; Approx. Time Counter : 10.5 - 21}

Sarah Cobler, Associated Students, University of Montana said this Bill would be especially beneficial to students to participate in voting. The possibility of fraud does not outweigh the possible benefits from this Bill. Other states have been successful with similar systems. This Bill anticipates and has effective measures to prevent types of fraud. Such mechanisms are signed affidavits, proof of residence and a picture ID.

Bob Ream, Chairman, Montana Democratic Party said this Party has always stood for increasing voter participation and is very concerned with the decrease in voter participation over the last 29 years. Something has to be done to address that. No bureaucratic excuses should supersede the ability of citizens to cast their ballots.

Darrell Holzer, Montana State AFL-CIO

{Tape : 1; Side : A; Approx. Time Counter : 21 - 28.3}

Deborah Kottel, Cascade County

{Tape : 1; Side : B; Approx. Time Counter : 0.2 - 12.3}

Rep. Norma Bixby, HD 5, Lame Deer

Stan Juneau, Browning

Opponents: Robert Throssell, Montana Association of Clerks and Recorders said **Rep. Juneau** is correct. Article 4, Section 3, Montana Constitution, says the legislature shall provide, by law, the requirements for residency, registration, absentee voting and administration of elections. It may provide for a system of poll booth registration and shall insure the purity of elections and a guard against abuses of the electoral process. Based on that authority, this legislature has delegated to the County Clerk and Recorders the responsibility of being the county election administrators. The Association believes in open and fair elections. They encourage participation. Opposition to this Bill, however, results from the fact that this legislature and its predecessors over the years have adopted a series of election laws that are found in Title 13 that they administer. It is a philosophical decision but there is a cost associated and the Counties finance the elections. The Constitution charges this body with ensuring the integrity of the election. Same day registration will open the door to fraud.

Duane Winslow, Election Administrator, Yellowstone County said today in Montana registration is open, accessible and one of the easiest states in the nation in which to vote.

{Tape : 1; Side : B; Approx. Time Counter : 12.3 - 21.3}

Vickie M. Zeier, Missoula County Clerk and Recorder and Election Administrator.

Elaine Graveley, representing the office of Secretary of State, Bob Brown.

{Tape : 2; Side : A; Approx. Time Counter : 0.1 - 0.6}

Questions from Committee Members and Responses: **Rep. Younkin** asked **Ms. Zeier** for clarification

Rep. Gallus asked **Mr. Winslow** if it was his testimony that there is a dollar amount attached to a citizen's right to vote. **Mr. Winslow** said he is not saying there should be a dollar amount placed on anyone's right to vote but there are limited resources and sometimes the cost and the benefits have to be weighed.

Rep. Eggers referred to **Ms. Zeier's** testimony stating his sense of what she said is, in order for this system to work there has to be an inter-connect between the election official and all of the precincts at the time the registration is made. **Ms. Zeier** said that is correct, if on election day you are registering to vote. **Rep. Eggers** asked if a computer or lap-top is needed at every precinct on election day? **Ms. Zeier** said that would aid them but questioned whether the election official or judge could manage a computer. **Rep. Eggers** said the expense would be inordinate so in order to implement this Bill to perform the identification process and to eliminate the fraud, part of it is using the digital world. **Ms. Zeier** agreed.

Reps. Mangan, Peterson, Noennig, Newman, Clark, Harris, Eggers and Shockley asked **Rep. Juneau, Mr. Winslow, Ms. Graveley, Mr. Throssell and Bob Ream** for clarification of sections of the Bill and procedural questions.

{Tape : 2; Side : A; Approx. Time Counter : 0.6 - 29}

{Tape : 2; Side : B; Approx. Time Counter : 0.1 - 8.3}

Rep. Shockley asked **Rep. Juneau** if she would be amenable to an amendment that would require a picture ID and that the person had to be in the right precinct as determined by looking at the picture ID. **-Rep. Juneau** said the current Bill gives provisions

for both a picture ID or another form of identification and she doesn't believe restricting it completely to a picture ID or another form of identification and she doesn't believe restricting it completely to a picture ID would be in line with the intent of the Bill in terms of trying to make voting as accessible as possible to everyone. She does not believe the Constitution states we have to put conditions on the voter in order to participate.

Rep. Shockley asked **Rep. Juneau** if she would be opposed to an amendment that might provide this affidavit so the Secretary of State would not have to go to that effort and we would know what it said? The affidavit would be part of the statute. **Rep. Juneau** said she would agree to that.

Rep. Juneau also is considering an amendment on Page 2, line 19, under the new Section which will replace the word "precinct" where it appears first, with the word "polling place" and closed the Hearing on HB 54.

{Tape : 2; Side : B; Approx. Time Counter : 8.3 - 17.1}

EXHIBIT (juh05a04) given to Secretary after the Hearing.

HEARING ON HB 104

Sponsor: **Rep. Paul Clark, HD 72** said this Bill is primarily designed to be a clarification Bill. There are currently two forms of sentencing done in the court system. There is an oral sentence that is given by the judge at the time of sentencing and then there is the sentence for the record which is transmitted to the Department of Corrections, known as the written sentence. That is the sentence by which the Department of Corrections carries out the sentencing. It has been brought to their attention by the Court system that at times there may be a conflict which exists between what the judge said and what is written.

Proponents: **Rep. Newman** said because of his role as a criminal prosecutor, he is appearing as a proponent. This Bill does not abrogate the right of a defendant to have the written judgement correspond with the oral pronouncement by the sentencing judge. It simply places a reasonable time restriction on a particular defendant to exercise that right so that we can have some measure of certainty in the criminal law and in the criminal judgements. The defendant's right is still protected, the defense simply can't "sleep" on that right but rather must assert that right, if, in fact, the written judgement does not correspond with the oral pronouncement of sentence. The 120 days' period is an ample

period of time for the defendant to have reviewed the written judgement and considered the sentencing process that he or she has just gone through. The decision of the Montana Supreme Court concerning the difference between oral and written judgements is well reflected in statute. The defendant's right is still protected but it adds a measure of certainty that must be present in criminal law.

Matt Robertson, Attorney, Department of Corrections

John Connor, Attorney General's Office, Montana County Attorneys' Association

{Tape : 3; Side : A; Approx. Time Counter : 1.1 - 11.9}

Opponents: None

Questions from Committee Members and Responses: Reps. Harris, Noennig, Eggers and Shockley asked for clarification to Mr. Connor and Mr. Robertson.

Closing by Sponsor: Rep. Paul Clark closed the Hearing on HB 104.

Meeting Adjourned.

The Chairman said, without objection, he would request a fiscal note to HB 54.

ADJOURNMENT

Adjournment: 12:10 A.M.

REP. JIM SHOCKLEY, Chairman

MARY LOU SCHMITZ, Secretary

JS/MS

EXHIBIT (juh05aad)